

REMARKS/ARGUMENTS

In the present application, claims 1-12 are pending. Claims 1-12 are rejected. By this amendment, claim 6 has been amended. No new claims have been added. No new matter has been added as a result of the amendments made herein. As a result of this amendment, claims 1-12 are now believed to be in condition for allowance.

The support for the amendment to claim 6 may at least be found at page 5, lines 6-9 and lines 16-32; and, in the claims and figures as originally filed.

The Examiner rejected claim 6 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

The Examiner rejected claims 1-10 under 35 U.S.C. §103(a) as being unpatentable over Wendt et al. (U.S.P.N. 4,258,821) in view of Reed (U.S.P.N. 3,589,971), and further in view of Das et al. (U.S.P.N. 5,274,200).

The Examiner rejected claims 11 and 12 under 35 U.S.C. §103(a) as being unpatentable over Wendt et al. in view of Das et al.

Rejection under 35 U.S.C. §112, second paragraph

Claim 6 is rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

The Examiner stated the following:

"Claim 6 recites the limitation 'the vessel' in line 2. There is insufficient antecedent basis for this limitation in the claim."

(Office action, page 2, paragraph 1)

Applicant has amended claim 6 to reflect its dependency upon claim 2 and provide sufficient antecedent basis for the limitation "the vessel". Support for the amendment to claim 6 may at least be found at page 6, lines 6-9 and lines 16-32 in Applicant's specification and in the claims and figures as originally filed.

**Rejections under 35 U.S.C. §103(a)**

The Examiner rejected claims 1-10 under 35 U.S.C. §103(a) as being unpatentable over Wendt et al. in view of Reed, and further in view of Das et al.

The Examiner stated the following:

"It would have been obvious to a person with ordinary skill in the art at the time of the invention was made to add the Reed insulating layer and the Das et al. sound barrier layer to the Wendt et al. design because it would provide an insulating layer that would help retain the heat of the component, decreasing energy loss due to heat loss; and the sound barrier would complement the Wendt et al. open cell sound absorbing layer by providing a layer that would reflect back to the source the sound waves that passes through the open cell layer."

(Office action, page 3, paragraph 3).

Wendt et al. teaches employing a sound absorbent flexible liner material in a cover for a spa blower component (Col. 1, ll. 6-9; Col. 2, l. 65 through Col. 3 l. 6; Abstract). Das et al. teaches a sound attenuating enclosure for a compressor (Col. 1, ll. 35-38; Col. 2, ll. 43-51). The invention of Reed relates to the thermal installation of instruments to protect the instruments against freezing in cold weather and to prevent rapid heating and cooling of instruments intermittently subjected to hot fluid by retaining heat from the fluids within the instrument (Col. 1, ll. 26-30).

When an obviousness determination is based on multiple prior art references, there must be a showing of some "teaching, suggestion, or reason" to combine the references. Gambro Lundia AB v. Baxter Healthcare Corp., 110 F.3d 1573 (Fed. Cir. 1997) (also noting that the "absence of such a suggestion to combine is dispositive in an obviousness determination"). Although a reference need not expressly teach that the disclosure contained therein should be combined with another, See Motorola, Inc. v. Interdigital Tech. Corp., 121 F.3d 1461, 1472 (Fed. Cir. 1997), the showing of combinability, in whatever form, must nevertheless be "clear and particular." See In re Dembicza, 175 F.3d 994, 999 (Fed. Cir. 1999).

In framing his objection, the Examiner takes the position that one of ordinary skill in the art would be motivated to combine the insulating layer of Reed and the sound barrier layer of Das with the spa blower cover of Wendt to construct Applicants' claimed invention in art of refrigeration technology. Absent from Wendt, Reed and Das is a principal reference which broadly discloses all of the elements claimed in

Applicants' claim 1. As the Examiner acknowledges in his remarks, Wendt fails to disclose a closed cell insulation layer comprising an inner and outer surface, and a sound barrier layer comprising an inner surface in contact with the outer surface of the open cell foam layer. Moreover, Wendt contains no mention or reference to the refrigeration technology arts or solving any problems associated with refrigeration technology arts. Wendt strictly pertains to attenuating noise emanating from spa blowers so as to enhance the spa operator's use and enjoyment. Absent from Wendt is the requisite motivation to combine Das and Reed to construct Applicant's claimed invention. The Examiner's reliance upon Wendt to provide the requisite motivation for seeking out Reed and Das is a piecemeal rejection based on collecting together elements from different references without a principal reference which broadly discloses all of the elements of Applicants' claim 1. Such requisite motivation to combine references cannot be supplied by the Examiner, but must be found in the cited references themselves.

As a result, Wendt et al. in view of Das et al., and further in view of Reed fail to teach, suggest, or motivate one skilled in the art all of the elements recited in Applicant's claim 1. Consequently, Applicant's claim 1 and dependent claims 2-10, by virtue of their dependency upon claim 1, are patentable over Wendt et al. in view of Reed, and further in view of Das et al.

The Examiner rejected claims 11 and 12 under 35 U.S.C. §103(a) as being unpatentable over Wendt et al. in view of Das et al.

The Examiner stated the following:

"With respect to claim 11, Wendt et al. teach an insulating jacket for a electric system component, comprising an open cell foam layer comprising an inner surface in contact with a vessel and an outer surface (Figs. 1 - 3), but fails to disclose a sound barrier comprising an inner surface in contact with the outer surface of the open cell foam layer."

(Office action, page 5, paragraph 3).

As discussed above, Wendt et al. lacks the requisite motivation to combine with Das et al. and render obvious Applicant's claimed invention. Wendt et al. teaches, suggests, and motivates one skilled in the art to attenuate noise emanating from a spa blower component by employing sound absorbent flexible liner material in the spa blower cover. Wendt et al. is strictly confined to spa technology and fails to mention or make any reference to the art of refrigeration technology. Wendt fails to provide the requisite motivation to one skilled in the art to seek out the sound barrier material taught by the Das reference in order to construct the insulating jacket recited in Applicants' claim 11. As a result, Wendt et al. in view of Das et al. fails to teach, suggest, or motivate one skilled in the art all of the elements recited in Applicant's claim 11. Applicant's claim 11 and claim 12, by virtue of its dependency upon independent claim 11, are patentable over and not obvious in light of Wendt et al. in view of Das et al.

Conclusion

An earnest and thorough attempt has been made by the undersigned to resolve the outstanding issues in this case and place same in condition for allowance. If the Examiner has any questions or feels that a telephone or personal interview would be helpful in resolving any outstanding issues which remain in this application after consideration of this amendment, the Examiner is courteously invited to telephone the undersigned and the same would be gratefully appreciated.

It is submitted that the claims herein patentably define over the art relied on by the Examiner and early allowance of same is courteously solicited.

If any fees are required in connection with this case, it is respectfully requested that they be charged to Deposit Account No. 02-0184.

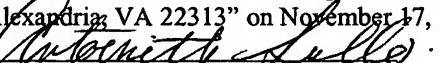
Respectfully submitted,

VISHNU M. SISHTLA

By   
Ross J. Christie  
Attorney for Applicants  
Reg. No. 47, 492  
Tel: (203) 777-6628  
Fax: (203) 865-0297

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I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: "Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313" on November 17, 2004

  
Antoinette Sullo